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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 UNITED STATES OF AMERICA,

8 Plaintiff,

CR03-496 TSZ

9 v.

10 IVY B. GAINES,

11 Defendant.

12 IVY BYRD GAINES,

13 Petitioner,

C17-264 TSZ

14 v.

15 UNITED STATES OF AMERICA,

ORDER

16 Respondent.  
17

18 THIS MATTER comes before the Court on two motions brought by Ivy Byrd  
19 Gaines, namely (i) a motion to reduce sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i),  
20 CR03-496, docket no. 132, and (ii) a motion to vacate, set aside, or correct sentence  
21 pursuant to 28 U.S.C. § 2255, C17-264, docket no. 1. Having reviewed all papers filed in  
22 support of, and in opposition to, the motions, the Court enters the following order.  
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1 **Background**

2 In March 2005, a jury found Gaines guilty on all 18 counts charged in the Second  
3 Superseding Indictment, which included five counts of Armed Bank Robbery, one count  
4 of Bank Robbery, one count of Armed Credit Union Robbery, one count of Credit Union  
5 Robbery, two counts of Interference with Commerce by Robbery (*see* Hobbs Act, 18  
6 U.S.C. § 1951), and eight counts of Using a Firearm During and in Relation to a Crime of  
7 Violence (*see* 18 U.S.C. § 924(c)), which corresponded to the six armed robberies and  
8 two Hobbs Act robberies. *See* Verdict (CR03-496, docket no. 84); Second Superseding  
9 Indictment (CR03-496, docket no. 35). In July 2005, pursuant to the then-applicable  
10 version of 18 U.S.C. § 924(c)(1)(C), as interpreted by the United States Supreme Court,  
11 *see Deal v. United States*, 508 U.S. 129 (1993), Gaines was sentenced to seven years in  
12 prison on the first firearm enhancement and 25 years on each of the other seven firearm  
13 enhancements, to be served consecutively, for a total of 182 years, to run consecutively to  
14 the time he had already served (595 days), which was the term imposed as to all ten  
15 robbery offenses combined. *See* Judgment (CR03-496, docket no. 94). Gaines has now  
16 been incarcerated for over 17 years, which is approximately 19½ years in custody,  
17 considering good-time credit. He is currently 56 years of age.

18 In 2018, as part of the First Step Act, Congress amended 18 U.S.C. § 924(c)(1)(C).  
19 *See United States v. McCoy*, 981 F.3d 271, 274 (4th Cir. 2020). Under the revised  
20 language, the 25-year mandatory minimums would not apply to Gaines because, at the  
21 time he committed the offenses at issue, he had not previously been convicted of  
22 violating 18 U.S.C. § 924(c). *See id.* at 275 (observing that the 25-year enhancement is  
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“reserved for recidivist offenders, and no longer applies to multiple § 924(c) convictions obtained in a single prosecution” (quoting *United States v. Jordan*, 952 F.3d 160, 171 (4th Cir. 2020)). The statutory modification was not, however, explicitly made retroactive, *see Jordan*, 952 F.3d at 174, and Gaines seeks the benefit of the legislative change via his motion under § 3582(c)(1)(A)(i). Gaines also challenges, pursuant to § 2255, the legal basis for his convictions under § 924(c), arguing that neither armed bank robbery nor Hobbs Act robbery constitute the requisite “crime of violence” to serve as a predicate for the firearm enhancements at issue. The Government opposes both motions.

## **Discussion**

### **A. Motion to Reduce Sentence**

A sentence is generally considered final and may not be altered except in limited circumstances. *See* 18 U.S.C. § 3582(b); *see also Dillon v. United States*, 560 U.S. 817, 824 (2010). Prior to 2018, a modification for reasons other than a post-conviction lowering of the applicable sentencing range could be made only upon a motion brought by the Director of the Bureau of Prisons (“BOP”). *See United States v. Gunn*, 980 F.3d 1178, 1179 (7th Cir. 2020). Pursuant to the First Step Act, a defendant may now directly request a reduction in the term of incarceration, provided that all administrative remedies have been exhausted.<sup>1</sup> *See* 18 U.S.C. § 3582(c)(1)(A); *see also United States v. Brooker*,

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<sup>1</sup> On August 14, 2020, Gaines submitted a written request to the warden at the United States Penitentiary in Pollock, Louisiana, asking for a reduction in sentence based on “extraordinary or compelling circumstances.” Ex. 1 to Mot. (docket no. 132-1); *see also* Gaines Decl. at ¶ 1 (docket no. 142). The warden received Gaines’s request on August 17, 2020, but did not respond

1 976 F.3d 228, 233 (2d Cir. 2020). To obtain relief, a defendant must meet two criteria:

2 (i) “extraordinary and compelling reasons” warrant a reduction in his or her sentence; and

3 (ii) the reduction is consistent with applicable policy statements issued by the United

4 States Sentencing Commission. 18 U.S.C. § 3582(c)(1)(A). In modifying any sentence,

5 the Court must consider the applicable factors set forth in 18 U.S.C. § 3553(a). *Id.*

6 Congress has not defined “extraordinary and compelling reasons,” but rather

7 delegated that task to the Sentencing Commission. *See* 28 U.S.C. § 994(t); *see Brooker*,

8 976 F.3d at 232. In 2006, the Sentencing Commission promulgated United States

9 Sentencing Guideline (“USSG”) § 1B1.13, the application notes of which describe three

10 categories of potentially “extraordinary and compelling reasons,” namely medical

11 condition, age, and family circumstances, *see* USSG § 1B1.13 cmt. n.1(A)–(C), and a

12 “catch-all” provision, *id.* cmt. n.1(D), which “opens the door” to considering factors other

13 than those specifically enumerated, *see United States v. McPherson*, 454 F. Supp. 3d

14 1049, 1053 (W.D. Wash. 2020). USSG § 1B1.13 has not been updated since the passage

15 of the First Step Act, and every Circuit to address the issue has concluded that the

16 Sentencing Commission’s policy statement applies only when a § 3582(c)(1)(A) motion

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19 until September 17, 2020, *see* Ex. to Gaines Decl. (docket no. 142 at 2), which was one day past  
20 the 30-day period that Gaines was required to wait before filing his pending motion to reduce  
21 sentence. *See* 18 U.S.C. § 3582(c)(1)(A). Gaines has initiated an administrative appeal of the  
22 warden’s decision, but the record contains no indication that such process has been completed.  
23 *See* Ex. to Gaines Decl. (docket no. 142 at 3); *see also United States v. Blinks*, No. 17-CR-0248,  
2020 WL 5366728, at \*2 (E.D. Cal. Sep. 8, 2020) (describing BOP’s Administrative Remedy  
Procedure). The Government, however, has not disputed that Gaines has exhausted his  
administrative remedies, and the Court concludes that it has jurisdiction to hear Gaines’s  
§ 3582(c)(1)(A) motion.

1 is brought by the BOP. *See McCoy*, 981 F.3d at 281-84; *Gunn*, 980 F.3d at 1180-81;  
2 *United States v. Jones*, 980 F.3d 1098 (6th Cir. 2020); *Brooker*, 976 F.3d at 235-36.

3 Thus, for purposes of Gaines’s motion to reduce sentence, USSG § 1B1.13 neither limits  
4 this Court’s discretion with respect to what constitutes “extraordinary and compelling  
5 reasons” nor serves as an “applicable policy statement” against which the pending request  
6 must be measured. *See, e.g., Jones*, 908 F.3d at 1111 (“In cases where incarcerated  
7 persons file motions for compassionate release, federal judges may skip step two of the  
8 § 3582(c)(1)(A) inquiry and have full discretion to define ‘extraordinary and compelling’  
9 without consulting the policy statement § 1B1.13.”).

10 The Court concludes that both (i) the “draconian” nature of the now obsolete  
11 jurisprudence concerning the “stacking” of mandatory minimums, *see United States v.*  
12 *Quinn*, 467 F. Supp. 3d 824, 827 (N.D. Cal. 2020), and (ii) the substantial disparity  
13 between Gaines’s sentence and the prison terms that similarly-situated defendants would  
14 receive under the current version of § 924(c), constitute “extraordinary and compelling  
15 reasons” justifying a reduction in sentence. *See McCoy*, 981 F.3d at 285-86; *United*  
16 *States v. Clausen*, No. 00-291-2, 2020 WL 4260795 (E.D. Penn. July 24, 2020); *United*  
17 *States v. Young*, 458 F. Supp. 3d 838 (M.D. Tenn. 2020); *United States v. Haynes*, 456 F.  
18 Supp. 3d 496 (E.D.N.Y. 2020); *United States v. Maumau*, No. 08-cr-00758, 2020 WL  
19 806121 (D. Utah Feb. 18, 2020); *United States v. Urkevich*, No. 03CR37, 2019 WL  
20 6037391 (D. Neb. Nov. 14, 2019); *see also United States v. Lott*, No. 95cr72, 2020 WL  
21 3058093 (S.D. Cal. June 8, 2020); *United States v. Arey*, 461 F. Supp. 3d 343 (W.D. Va.  
22 2020). Moreover, Congress’s decision not to give automatic retroactive effect to its  
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1 amendment of § 924(c)(1)(C) does not preclude relief; the “safety valve” offered by  
 2 § 3582(c)(1)(A) allows for sentence reductions on a case-by-case basis. *See McCoy*, 981  
 3 F.3d at 286-87.

4 In providing Gaines a remedy under § 3582(c)(1)(A), the Court is not required to  
 5 immediately release him, but rather may adjust his sentence downward, resulting in his  
 6 continued incarceration for some period of time. *See Maumau*, 2020 WL 806121 at \*8;  
 7 *see Lott*, 2020 WL 3058093 at \*3 (reducing sentence from 240 to 192 months); *Arey*, 461  
 8 F. Supp. 3d at 352 (eliminating the “stacking” § 924(c) sentences, resulting in a decrease  
 9 from 895 to 390 months). As has been the practice of other courts, *see Clausen*, 2020  
 10 WL 4260795 at \*9; *Young*, 458 F. Supp. 3d at 850; *Maumau*, 2020 WL 806121 at \*8, the  
 11 Court SCHEDULES a hearing for **February 4, 2021**, at **10:00 a.m.**, at which the parties  
 12 may present their arguments regarding the appropriate sentence reduction, considering  
 13 the relevant § 3553(a) factors. The virtual hearing will be conducted via ZoomGov.com.  
 14 Counsel shall meet and confer and jointly make the necessary arrangements with BOP for  
 15 Gaines to participate via videoconference. The link for the ZoomGov.com session will  
 16 be provided via email. Sentencing memoranda shall be filed by January 29, 2021.

17 **B. Motion to Vacate, Set Aside, or Correct Sentence**

18 In light of the Court’s ruling on Gaines’s § 3582(c)(1)(A) motion, the Court need  
 19 not address Gaines’s request for this Court to call for a re-examination of the decision in  
 20 *Deal*. *See* Supp. Memo. at 2-6 (C17-264, docket no. 24). With respect to the separate  
 21 issues of whether armed bank robbery and/or Hobbs Act robbery are crimes of violence  
 22 for purposes of the firearm enhancements imposed under § 924(c), Gaines acknowledges  
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1 that the Ninth Circuit has decided the questions adversely to him. *See id.* at 2 (citing  
2 *United States v. Dominguez*, 954 F.3d 1251 (9th Cir. 2020), and *United States v. Watson*,  
3 881 F.3d 782 (9th Cir. 2018)). For the present time, the Court is bound by these  
4 opinions, and therefore DENIES Gaines's § 2255 motion. This ruling is, however,  
5 without prejudice to renewing the § 2255 motion if the United States Supreme Court  
6 grants a writ of certiorari in *Lamont Korte Gaines v. United States*, Case No. 20-294.

7 **Conclusion**

8 For the foregoing reasons, the Court ORDERS:

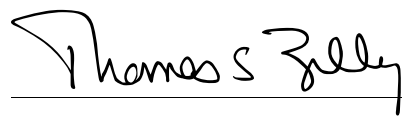
9 (1) Gaines's § 3582(c)(1)(A) motion to reduce sentence (CR03-496, docket  
10 no. 132) is GRANTED in part and DEFERRED in part. The Court concludes that  
11 "extraordinary and compelling reasons" warrant a reduction in Gaines's sentence and  
12 SETS a virtual hearing for **February 4, 2021**, at **10:00 a.m.**, to determine the appropriate  
13 term of imprisonment in light of the relevant factors set forth in § 3553(a).

14 (2) Gaines's § 2255 motion (C17-264, docket no. 1) is STRICKEN in part as  
15 moot and DENIED in part, but without prejudice to renewing the motion if a writ of  
16 certiorari is granted in Supreme Court Case No. 20-294.

17 (3) The Clerk is directed to send a copy of this Order to all counsel of record.

18 IT IS SO ORDERED.

19 Dated this 23rd day of December, 2020.

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22 Thomas S. Zilly  
23 United States District Judge